

Re: Request for Comments on Discretion To Institute Trials Before the Patent Trial and Appeal Board



Founded in January 2012, the Developers Alliance is a global industry association that supports software developers as entrepreneurs, innovators, and creators.

DevelopersAlliance.org

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Patent and Trademark Office,

I am the founder of TMSOft LLC, a Florida-based developer of mobile apps and games. Additionally, I am a board member of the Developers Alliance, a non-profit global membership organization that supports developers as creators, innovators, and entrepreneurs. The inter partes review ("IPR") process helps companies like mine stay in business and fight off abusive patent litigation, thus I urge you to reverse recent efforts weakening the IPR system at the PTO.

In 2011, my company received a demand letter from a patent assertion entity ("PAE"), falsely claiming my app was infringing on one or more of its patents. The PAE filed a lawsuit against my company and numerous other app developers. Although the lawsuit was clearly frivolous and ultimately dismissed, I was forced to defend myself and my company in the court system. Patent litigation costs well into the millions of dollars — funds that many startups do not have. If not for pro-bono counsel, my company may not be here today.

The Patent Trial and Appeals Board ("PTAB") provides a critical tool for protecting startups such as mine from over-broad, abusive patents that support a PAE's ability to demand — and receive — less than the cost of litigation in licensing fees. When Congress passed the America Invents Act ("AIA") their intention was "to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs." Out of this came the IPR system to reduce the harms caused by low-quality patents and abusive litigation.

The IPR system has been a useful tool for curbing the negative market effects of patent trolls, increasing U.S. business activity, and disincentivizing frivolous patent lawsuits as it makes their abusive practices less profitable. Thus, we support a robust IPR process and are against any measures to weaken it. The goal of IPR is to weed out bad patent claims efficiently. As a software developer and inventor with multiple patents in my name, I can attest that there are a large number of patents that should have never been awarded because of vague and far-reaching claims. These low-quality patents ultimately weaken the U.S. patent system and encourage patent trolls to go after startups such as mine.

Patent litigation is on the rise again following the *NHK Spring Co. v. Intri-Plex Techs., Inc.* case. PAE's are taking advantage of this precedent to flood the court system with frivolous lawsuits and extort money from small businesses that cannot afford the high cost of litigation.

Application developers want to spend more time creating innovative products and less time worrying about frivolous lawsuits from patent trolls. The PTO must support efforts to promote quality patents and allow for PTAB cases to be argued on their merits. Discretionary denials of inter partes reviews by the USPTO should be eliminated.

Sincerely,

Todd Moore

CEO & Founder, TMSOft
Board of Directors, Developers Alliance